

Agricultural Marketing Service, USDA

§ 1210.403

other specified information to the Secretary, in a manner that will ensure receipt within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993; 59 FR 18948, Apr. 21, 1994; 60 FR 10799, Feb. 28, 1995]

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

(b) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in § 1210.403 and § 1210.404 of this subpart.

(c) All producers and handlers attending their district conventions may

be candidates for one or more of the positions of State spokesperson, district convention chairperson, and producer or handler nominee.

[54 FR 38205, Sept. 15, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.403 Voting procedures.

(a) Proxy voting by producers and handlers for producer and handler nominees shall be permitted at all district conventions: *Provided*, That producers may cast proxy votes for producers only, and handlers may cast proxy votes for handlers only. In non-multi-State districts, proxy voting shall be permitted for all producer and handler nominee balloting to determine the districts' nominees. In multi-State districts, proxy voting shall be permitted for all producers and handlers participating in a State's balloting to determine the State's nominees. No other proxy voting, such as for district convention chairperson, shall be allowed. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(1) The proxy voter's name, address, and telephone number;

(2) Signature and date signed;

(3) A certification identifying the proxy voter as a producer or a handler; and

(4) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

All proxy documentation must be received by the Board at its headquarters address at least two weeks before the district convention is scheduled to convene. For the purpose of the initial district convention, all proxy documentation must be forwarded to the Department representative identified in the call for the district convention in a manner that will ensure receipt, at the address specified in the call, at least 72 hours before the district convention is scheduled to convene. The Board, or in the case of the initial conventions the Department representative identified in the call or other representative of the Department, may challenge any

proxy vote and disqualify any challenged vote for cause. In the case of duplicate proxy authorizations by any person, only the first authorization, determined by date will be allowed. In the case of duplicate dates, the proxy which is received first will be allowed.

(b) In non-multi-State districts, convention chairpersons shall be elected by a majority vote of the eligible voters in attendance. In multi-State districts, the election shall be by majority vote of all States present with each State's vote(s) determined by a majority vote of the eligible voters of that State in attendance. Each such State is entitled to one vote, plus one additional vote for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two conventions, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

(c) In multi-State districts 3, 4, 5 and 7, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

(d) Convention chairpersons will coordinate the entire producer and handler nomination process. In conducting the nomination process, each convention chairperson will ensure that:

(1) Voting for producer nominees is limited to producers, and voting for handler nominees is limited to handlers; and

(2) Producer candidates for nomination are producers, and handler candidates for nomination are handlers.

(e) Voting, for producer and handler nominees, in non-multi-State districts shall be on the basis of one vote per

person, except that persons authorized to cast proxy votes shall be allowed to cast all proxy votes not disallowed by the Board or the Department. Election of nominees shall be on the basis of a simple majority of all eligible votes cast.

(f) Voting for producer and handler nominees in multi-State districts shall be on a State by State basis. Producers and handlers from each State shall caucus separately, at the district convention, for the purpose of determining which nominees shall receive their State's vote(s) for membership on the Board. Each State's vote(s) shall be based on a simple majority of all votes (including proxy votes) cast by producers or handlers voting in their State's caucus. Each State represented at a multi-State district convention shall have one vote for each producer position and one vote for each handler position from the district on the Board. Each State shall further have an additional vote toward each position for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two calls for nominees, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes. Each State spokesperson will cast the State's vote(s) for each nominee position. Election of nominees shall be on the basis of a simple majority of all State votes cast.

(g) During the voting for convention chairperson, State spokesperson, and Board member nominee, should no candidate receive the required simple majority on the first ballot, the number of candidates may be reduced by dropping one or more of the lowest vote recipients from the list of candidates. The balloting will be repeated until the position is filled.

(h) Two nominees shall be elected for each of the producer and handler positions from each district on the Board. The two nominees for each position shall be elected simultaneously. The convention chairperson will open the

floor to the nomination of candidates for possible election as a Board member nominee for each available position. Each position will be dealt with separately (*i.e.*, candidates for one position will be nominated and then elected before the convention moves on to the next available position). Each eligible voter may vote for two of the nominees on one ballot. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be elected as the district's Board member nominees for the position. No individual elected as a nominee for Board membership may be a candidate on subsequent Board member nominee ballots (*i.e.*, two different producer names and two different handler names must be submitted as nominees for each producer and handler position from each district to the Secretary of Agriculture). There shall be no designation of first and second choice nominees.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993]

IMPORTER MEMBERS

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification